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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/792,190 03/03/2004 Timothy S. Hansen 77059 4927

48940 7590 01/16/2007
FITCH EVEN TABIN & FLANNERY
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CHICAGO, IL 60603-3406

EXAMINER

STULII, VERA

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS 01/16/2007 PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/792,190

Applicant(s)

HANSEN ET AL.

Examiner

Vera Stulii

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>06/14/2004, 07/01/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-21 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "significant amounts of a texture enhancing agent" in claim 1 is a relative term which renders the claim indefinite. The term "significant amounts of a texture enhancing agent" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 13 recites the limitation "the soft wheat flour" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufmann (US 3,162,536).

Kaufmann discloses a method for producing alimentary food paste from starchy flours of low protein content. Kauffman discloses mixing low protein flours with water (Col. 1 lines 35-36). Kaufmann also discloses extruding the pasta dough (Col. 1 line 37). Kaufmann also discloses the water content of the resulting dough is from 30 to 40 percent by weight (Col. 2 lines 1-3). Kaufmann also discloses no significant amounts of a texture-enhancing agent. Kauffman also discloses that "depending on particular properties of the starchy flours of low protein employed, the composition of the flour and the water content of the dough and the processing temperature applied thereto may be adapted to the various needs" (Col. 2 lines 36-41). In regard to firmness recitation, Kauffmann teaches "products produced in this manner when tested in the uncooked state by the so-called chewing test, have an elastically yieldable character which may be attributed to the gelatinization of starch throughout the cut strands of grain" (Col. 2 lines 31-35). In regard to specific protein level of flour, Kauffmann teaches potato flour as a low protein flour (Col. 2 line 55). As evidence by Bowes et al (Bowes & Church's Food values of Portions Commonly Used), potato flour contains about 8% of protein.

Kaufmann does not disclose specific temperature and humidity and particular firmness of the dried pasta.

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Since Kaufmann teaches that "depending on particular properties of the starchy flours of low protein employed, ... the processing temperature applied thereto may be adapted to the various needs", it would have been obvious to one of ordinary skill in the art to modify drying temperature and humidity depending on particular type of low protein flours used. Since Kaufmann teaches "products produced in this manner when tested in the uncooked state by the so-called chewing test, have an elastically yieldable character which may be attributed to the gelatinization of starch throughout the cut strands of grain", it would have been obvious to one skilled in the art to modify gelatinization conditions such as temperature in order to achieve desired level of pasta firmness. See MPEP 2144.05 (II), which states that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation."

Claims 11 and 13-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufmann (US 3,162,536) in view of Flessner GMBH & CO (EP 0084831).

Kaufmann is taken as cited above.

Kaufmann do not disclose soft wheat flour.

Flessner GMBH & CO hereinafter Flessner disclose producing an alimentary paste article using soft wheat flour (soft wheat semolina). Cake flour was known to be a finely milled flour made from soft wheat. Such soft wheat flour has very low gluten content, and contains 8-10% protein.

Since Kauffman teaches alimentary paste food from starchy flours of low protein content, and Flessner teaches producing alimentary paste article using soft wheat flour

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which has a low protein content, it would have been obvious to one of ordinary skill in the art to modify the disclosure of Kauffmann and employ soft wheat flour as taught by Flessner in order to obtain a low-protein pasta product.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stull whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

vs

V. Stull


KEITH HENDRICKS
PRIMARY EXAMINER